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EXAMINER

PICKETT, JOHN G

ART UNIT PAPER NUMBER

3728

DATE MAILED: 04/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/771,606

Applicant(s)

HAREL, KENNETH N.

Examiner

Gregory Pickett

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-17 and 19-22 is/are rejected.
- 7) ☒ Claim(s) 9 and 18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/3/04.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 5, 8, 19, and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 recites the limitation "return panel" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 8 recites the rib panels converging to a 90 degree angle whereas the angle is previously set forth as an acute angle. An acute angle is less than 90 degrees by definition. It is indefinite as to how the angle can be both acute and 90 degrees.

Claim 19 recites the limitation "the sleeve" in lines 4, 10, 12, and 14. There is insufficient antecedent basis for this limitation in the claim. The examiner assumes claim 19 is dependent upon claim 18.

Claim 22 recites the limitation "one of the flaps" in lines 19, 22, and 24. It is unclear as to which flaps are being referred to since the claim previously sets forth both sidewall flaps and end wall flaps.

Claim 22 recites the limitation "first mentioned closure segment" in line 28. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 10, 12, 14, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Hermansson et al (EP 493 353 A1).

Regarding claim 10, Hermansson et al discloses a package (Figure 2) comprising an elongated sheet (Figure 1) folded along fold lines 27 to form a box top wall 15, bottom wall 21 & 22, first sidewall 10, and second sidewall 12 cooperating to define a box, and a sheet section 19 & 25 projecting from the bottom end to form a rib device. Hermansson et al is capable of retaining elongated strips as claimed.

As to claim 12, Hermansson et al discloses return panel 20.

Regarding claim 14, Hermansson et al, as applied to claim 10 above, discloses the claimed method by presentation.

As to claim 16, Hermansson et al discloses a sheet section of substantially triangular cross-section (see Figure 2).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 11 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hermansson et al.

Hermansson et al discloses the claimed invention except for the corrugated cardboard material. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the package in a corrugated cardboard material in order to add some shock absorbing function to the box. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

4. Claims 1-8, 10-17, 20, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Okonski (US 2,340,422; provided by applicant) in view of Petriekis et al (US 5,417,341).

Regarding claims 1 and 10, Okonski discloses a package device (Figure 1) comprising a sheet body (Figure 3) folded along fold lines to form a box with a top wall 5, 9, & 10, first sidewall 3, second sidewall 4, and sheet section 6 & 7 forming a rib device. The rib device is arranged at a substantially 90-degree angle.

Okonski merely lacks a bottom wall and an acute angle to the rib device.

Petrikis et al discloses a folded tubular package with overlapping walls arranged to increase the strength of the box along its entire length dimension (Col. 1, lines 55-61). It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the sheet section and bottom of Okonski first using the technique taught by Petrikis et al, and then completing the wrap-around to form the remaining enclosure as taught by Okonski in order to both eliminate the need for bands 12 and to increase strength of the box along its entire length.

As to the acute angle, the angle of the rib is designed to correspond to the angle of the retained articles (Okonski Col. 2, lines 51-55). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the rib of Okonski-Petrikis at an acute angle in order to accommodate elongated articles having an acute angle. A change in shape is generally recognized as being within the level of ordinary skill in the art.

As to claims 2, 7, and 11, both Okonski and Petrikis et al discloses corrugated cardboard.

As to claims 3, 4, and 12, Petrikis et al discloses a return panel 16 arranged as claimed.

As to claim 5, inasmuch as the examiner can determine the scope of claim, panel 22 of Petriekis et al, when modified with the wrap-around of Okonski, would appear to be arranged as claimed.

As to claim 6, Okonski discloses angled top panels (see Figure 2).

As to claims 8 and 13, inasmuch as the examiner can determine the scope of claim, Okonski discloses 90-degree rib panels (see Col. 2, lines 21-23).

Regarding claim 14, the package of Okonski-Petriekis, as applied to claim 1 above, discloses the claimed method by presentation.

As to claim 15, both Okonski and Petriekis et al discloses corrugated cardboard.

As to claim 16, Petriekis et al discloses a triangular cross-section.

As to claim 17, Petriekis et al discloses a turn-back panel 16 arranged as claimed.

Regarding claim 20, Okonski-Petriekis, as applied to claim 1 above, discloses the claimed invention including the means for fastening (adhesive, Petriekis Col. 2, lines 59-60).

As to claim 21, Petriekis et al discloses a spacer panel 16 arranged as claimed.

### ***Allowable Subject Matter***

5. Claims 9 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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6. Claim 19 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims. The indicated allowability of claim 19 is based upon its presumed dependency from claim 18.

7. Claim 22 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

8. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 571-272-4560. The examiner can normally be reached on Mon-Fri, 11:30 AM - 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Greg Pickett  
Examiner  
14 April 2005

